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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JUAN DIAZ, KEITH KEESLING,
CHRISTOPHER MURPHY, GARY
WEEKLEY, KAREN ALLEN and other
employees similarly situated,

Plaintiffs,

v.

CITY OF SAN JOSE,

Defendant.

Case Number: C07-06424 JW

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

The parties to the above-entitled action jointly submit this Case Management Statement and request the Court to adopt it as its Case Management Order in this Case.

1. Jurisdiction and Service

As this case arises under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. Section 201 *et. seq.*, Defendant City of San Jose ("City") does not deny that the Court has jurisdiction over the controversy. Venue in this matter is not in dispute and there are no other parties that remain to be served.

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1 2. Facts

2 Plaintiffs have served as firefighters employed by the City of San Jose, and have
3 worked overtime hours at various times over the time that they have worked with the City.
4 Plaintiffs claim, and the City denies, that the overtime payments made to Plaintiffs have been
5 less than what is required under the FLSA.

6 Plaintiffs' claims are based on theories that the FLSA requires the City to include the
7 holiday "in lieu" pay and other premium pay when calculating the hourly rate of pay that
8 Plaintiffs were paid for hours worked in excess of 80 hours per 14 day work period. Plaintiffs
9 also claim that the City has not been including the holiday in lieu pay and other premium
10 pays when calculating the FLSA overtime for the Plaintiffs. The City contends that it has
11 considered such pay for purposes of calculating the minimum wages due Plaintiffs, or that
12 such pay would not affect the minimum wages due Plaintiffs under a reading of the FLSA
13 and the Memorandum of Agreement between Plaintiff's Union and the City.

14 The City employs both 40 hour per week and 56 hour per week employees in the Fire
15 Department. Employees who are of the same rank, and years of service are paid the same
16 monthly base pay regardless of whether they are assigned as 40 hour employees or 56
17 hours employees, This results in the 40 hour employees receiving a higher hourly rate of
18 pay.

19 When Plaintiffs work shift assignments (normally assigned to 56 hour per week
20 employees) the City "converts" this overtime work to its 40 hour equivalent. That is, it
21 reduces the number of hours worked and pays the "converted hours" at the higher 40 hour
22 rate.

23 Plaintiffs allege that, although this conversion method results in the same dollar
24 amount for base pay, it serves to undercount the number of overtime hours subject to the
25 FLSA rate of pay. Finally, the plaintiffs allege that the City is improperly paying the plaintiffs
26 at the 56 hour rate of pay for shift overtime work when the correct rate of pay would be the
27 40 hour rate. The City denies that the Plaintiffs were paid less than what was required by the
28 FLSA.

1 3. Legal Issues

2 a. Must the City include "holiday in lieu" pay and other premium pays such
3 as EMT and bi-lingual pay when calculating the "regular rate of pay" for purposes of
4 paying FLSA overtime?

5 b. Does the FLSA require the City to pay Plaintiffs an overtime rate based
6 on a 40 hour rate of pay or on a 56 hour rate of pay when the overtime work is in a
7 shift (56 hour) position?

8 c. Does the practice of converting 56 hour work into its 40 hour equivalent
9 result in an impermissible undercounting of overtime hours subject to the FLSA rate of
10 pay?

11 4. Motions

12 There are no pending motions. A summary judgment motion may be able to dispose
13 of some, if not all, of the issues. Plaintiffs plan to file the following motions: Motion for
14 Summary Judgment; Motion for Class Notice and Administrative Motion to Consider Whether
15 Cases Should be Related.

16 5. Amendment of Pleadings

17 Plaintiffs plan to file an amendment to the complaint to correct the spelling of one of
18 the named defendant's names (Karen Allen to Karen Allyn).

19 6. Evidence Preservation

20 Defendants preserve payroll records pursuant to the requirements of the FLSA.

21 Plaintiffs have no overtime or payroll records in their possession but have preserved
22 correspondence between the parties regarding this dispute. Plaintiffs also have preserved
23 certain records from a previous lawsuit filed by the City's 56 hour fire department employees
24 over the same issue. The previous suit was settled via a stipulated judgment.

25 7. Disclosures

26 Parties are in the process of meeting and conferring on the nature of the initial
27 disclosures in the context of this case. The City has agreed to produce, without the need for
28 a formal document request, any and all payroll and overtime records for the named Plaintiffs.

1 The City has not determined the full scope of such a production, but plans to meet and
 2 confer with Plaintiffs' counsel regarding the nature and extent of any such production. The
 3 City anticipates being able to make such records available within the next 30 days or so.
 4 Plaintiffs have agreed to make as part of their initial disclosure the documents identified in
 5 Item 5, above, within the next 30 days.

6 8. Discovery

7 Plaintiff expects to take the following discovery. Request for Production of Documents;
 8 Request for Admissions; Deposition of person most knowledgeable regarding the City's
 9 payroll records and pay accounting system.

10 Defendants expect to take Plaintiffs' depositions and serve written discovery.

11 At this point, neither party expects to deviate from the Rules of Civil Procedure with
 12 regard to the timing and volume of discovery allowed.

13 9. Class Actions

14 N/A

15 10. Related Cases

16 On April 24, a second action was filed against the City for additional FLSA violations:
 17 *Welch, et all v. City of San Jose*, case number 5:08-CV-02132-JF. Plaintiffs are filing an
 18 Administrative Motion to Consider Whether the Cases Should be Related.

19 11. Relief

20 Plaintiff seek declaratory relief, back overtime pay, liquidated damages and attorneys
 21 fees and costs.

22 12. Settlement and ADR

23 The parties agree that Early Neutral Evaluation is an appropriate ADR option for this
 24 case.

25 13. Consent to Magistrate Judge for All Purposes

26 Defendants do not consent to have a magistrate conduct further substantive
 27 proceedings. Plaintiffs do not object to the services of a magistrate.

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14. Other References

N/A

15. Narrowing of Issues

Premature.

16. Expedited Schedule

N/A

17. Scheduling

The parties believe that the case should be ready for trial in late-2008, with cut off dates set accordingly.

18. Trial

Plaintiffs believe that the entire dispute can be resolved through a Motion for Summary Judgment. Plaintiffs further contend that the dispute is purely a legal one, that there are no material facts in dispute and that a trial court therefore would be inappropriate. The City does not dispute that a Summary Judgment may be dispositive, but has requested a jury trial in the event that is not the case. A trial should take approximately three to five court days, depending on the stipulations the parties may be able to agree upon.

19. Disclosure of Non-party Interested Entities or Persons

N/A

Dated: May 2, 2008

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By: /S/
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Dated: May 2, 2008

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